

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MADRID

INFO AMEMBASSY BEIRUT

C O N F I D E N T I A L STATE 177224

E.O. 11652: GDS

TAGS: MASS, SP, IZ

SUBJECT: SPANISH SALE OF RECOILLESS RIFLES TO IRAQ

REFERENCE: (A) MADRID 4796 (B) STATE 26205 (C) STATE 14104

BEIRUT POUCH BAGHDAD

1. WE HAVE CAREFULLY CONSIDERED RENEWED SPANISH REQUEST REPORTED REFTEL (A) FOR USG APPROVAL TO SELL 106MM RECOILLESS RIFLES TO IRAQ, AND HAVE CONCLUDED THAT WE CANNOT APPROVE PROPOSED SALE. IN OUR VIEW, FOREIGN POLICY CONSIDERATIONS (PRINCIPALLY, KURDISH WAR AND IRANIAN SENSITIVITIES TO IRAQI ACTIVITIES) RULE OUT SUCH SALE. IN ADDITION, WE ARE PROHIBITED BY LEGISLATION FROM APPROVING THE TRANSFER OF US MILITARY ITEMS TO IRAQ. IT SEEMS TO US THAT IT MIGHT BE BEST IN EXPLAINING OUR POSITION ON THIS
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QUESTION TO THE SPANISH TO BASE OUR REFUSAL PRIMARILY ON

THE LEGAL CONSTRAINTS INVOLVED. THE PERTINENT PROVISIONS OF US LAW ARE THEREFORE QUOTED BELOW IN SOME DETAIL.

2. THIS PROPOSAL FALLS WITHIN CATEGORY OF THIRD-PARTY TRANSFER. SECTION 3(A) OF FOREIGN MILITARY SALES ACT (FMSA) OF 1968, AS AMENDED, DISCUSSES SUCH TRANSFERS AS FOLLOWS: "IN CONSIDERING A REQUEST FOR APPROVAL OF ANY TRANSFER OF ANY WEAPON, WEAPONS SYSTEM, MUNITIONS, AIRCRAFT, MILITARY BOAT, MILITARY VESSEL, OR OTHER IMPLEMENT OF WAR TO ANOTHER COUNTRY, THE PRESIDENT SHALL NOT GIVE HIS CONSENT UNDER PARAGRAPH (2) TO THE TRANSFER UNLESS THE UNITED STATES ITSELF WOULD TRANSFER THE DEFENSE ARTICLE UNDER CONSIDERATION TO THAT COUNTRY, AND PRIOR TO THE DATE HE INTENDS TO GIVE HIS CONSENT TO THE TRANSFER, THE PRESIDENT NOTIFIES THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE IN WRITING OF EACH SUCH INTENDED CONSENT, THE JUSTIFICATION FOR GIVING SUCH CONSENT, THE DEFENSE ARTICLE FOR WHICH HE INTENDS TO GIVE HIS CONSENT TO BE SO TRANSFERRED, AND THE FOREIGN COUNTRY TO WHICH THAT DEFENSE ARTICLE IS TO BE TRANSFERRED."

3. KEY PHRASE IN FOREGOING PROVISION FOR PURPOSES OF PRESENT CASE IS "...UNLESS THE UNITED STATES ITSELF WOULD TRANSFER THE DEFENSE ARTICLE UNDER CONSIDERATION TO THAT COUNTRY..." IF ASKED BY CONGRESS, DEPARTMENT WOULD HAVE TO SAY THAT AT PRESENT TIME US WOULD NOT ITSELF TRANSFER 106MM RECOILLESS RIFLES TO IRAQ, NOT ONLY BECAUSE OF FOREIGN POLICY CONSIDERATIONS BUT ALSO BECAUSE WE COULD NOT LEGALLY DO SO SINCE IRAQ IS NOT ELIGIBLE UNDER SECTION 3(A)(1) OF FMSA TO PURCHASE DEFENSE ARTICLES AND SERVICES. IRAQ CAN ONLY BECOME ELIGIBLE FOR SUCH PURCHASES THROUGH A PRESIDENTIAL DETERMINATION, IN WHICH THE PRESIDENT FINDS THAT IN ACCORDANCE WITH SECTION 3(A)(1), THE SALE OF DEFENSE ARTICLES AND DEFENSE SERVICES TO IRAQ "WILL STRENGTHEN THE SECURITY OF THE UNITED STATES AND PROMOTE WORLD PEACE".

4. IN CONVEYING OUR RESPONSE TO FOREIGN MINISTER, YOU SHOULD EXPRESS OUR APPRECIATION FOR OPPORTUNITY TO CONSULT
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ON THIS MATTER AND EMPHASIZE THAT US POSITION IS BASED ON POLITICAL AND LEGAL FACTORS RELATING TO IRAQ. KISSINGER

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